

THIS OPINION WAS NOT WRITTEN FOR PUBLICATION

The opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.

Paper No. 27

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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Ex parte FRANK MEEHAN

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Appeal No. 94-4485  
Application No. 08/013,653<sup>1</sup>

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ON BRIEF

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Before KIMLIN, WALTZ and PAK, Administrative Patent Judges.  
KIMLIN, Administrative Patent Judge.

DECISION ON APPEAL

This is an appeal from the final rejection of claims 1, 9-11, 32, 33, 37, 38 and 48, all the claims remaining in the present application. Claim 1 is illustrative:

Claim 1. A method of neutralizing scatological odors comprising providing a receptacle into which fecal matter is to be discharged, depositing into said receptacle at least one drop of a solution comprising menthol dissolved in a further alcohol

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<sup>1</sup> Application for patent filed February 3, 1993. According to appellant, this application is a continuation of Application No. 07/318,909, filed March 3, 1989, now abandoned.

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in a concentration of 5-15% by weight, said solution having substantially no odor and being effective to neutralize the odor of the fecal matter by absorption.

The examiner relies upon the following references as evidence of obviousness:

Miller et al. (Miller)	3,675,625	July 11, 1972
Watanabe et al. (Watanabe)	4,218,432	Aug. 19, 1980
Meehan (Meehan '613)	4,567,613	Feb. 4, 1986
Meehan (Meehan '533)	4,633,533	Jan. 6, 1987
Sramek	4,861,583	Aug. 29, 1989
		(filed Nov. 20, 1987)

The Condensed Chemical Dictionary 218, 514, 549-50 (8th ed. 1971)

Webster's Ninth New Collegiate Dictionary 742 (1986)

Appellant's claimed invention is directed to a method of neutralizing scatological odors which emanate from fecal matter. The method comprises depositing into a receptacle which receives the fecal matter a 5-15% by weight solution of menthol in an alcohol. The solution is substantially odorless but neutralizes the odor of fecal matter by absorption thereof.

Claim 1 stands rejected under 35 U.S.C. § 103 as being unpatentable over Watanabe. Claims, 1, 9, 37, 38 and 48 stand rejected under 35 U.S.C. § 103 as being unpatentable over Miller, taken alone, or in combination with the Condensed Chemical Dictionary. In addition, claims 1, 9-11, 32, 33, 37, 38 and 48 stand rejected under 35 U.S.C. § 103 as being unpatentable over

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Meehan '533 in view of Webster's, The Condensed Chemical Dictionary, Meehan '613 and Sramek.

Upon careful consideration of the opposing arguments presented on appeal, we concur with appellant that the claimed subject matter would not have been obvious to one of ordinary skill in the art in view of the applied prior art. Accordingly, we will not sustain the examiner's rejections.

We consider first the examiner's rejection of claim 1 over Watanabe. The appealed claims require adding a 5-15% by weight solution of menthol in alcohol to a receptacle. However, Watanabe fails to disclose or suggest a solution of menthol in alcohol, let alone in the claimed concentration. Watanabe discloses polymethylene coloring agents in aqueous compositions to which can be added perfumes or deodorants, such as menthol and cinnamic alcohol. Consequently, Watanabe provides no suggestion of formulating a solution of menthol in alcohol, or employing menthol in a concentration that is substantially odorless. Watanabe teaches utilizing menthol in an amount that acts as a perfume or deodorant, i.e., an amount that is perceptible to the sense of smell.

We now turn to the rejection of claims 1, 9, 37, 38 and 48 over Miller, alone, or in view of The Condensed Chemical Dictionary. Miller discloses adding an odor control agent, such

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as menthol, to a solid absorbent, such as clay, in order to form an animal litter. The litter of Miller releases the deodorizing menthol upon the addition of moisture from animal urine or fecal matter. Miller expressly teaches that the odor control agent, menthol, is used to mask the odor while the solid absorbent neutralizes or absorbs the urine or fecal material (column 2, lines 3-26). Hence, Miller does not teach or suggest the claimed method of adding an odorless solution of menthol in alcohol to a receptacle. The Condensed Chemical Dictionary discloses that menthol is a perfume that is soluble in alcohol. Therefore, the teaching to be derived from The Condensed Chemical Dictionary is that if an alcohol solution of menthol is to be used as a perfume or a deodorant, it should be used in a concentration which is sufficient to be detected by the olfactory senses. In our view, there is no teaching or suggestion in the collective teachings of Miller and The Condensed Chemical Dictionary of utilizing an odorless solution of menthol in alcohol.

Our same reasoning applies to the examiner's rejection of claims 1, 9-11, 32, 33, 37, 38 and 48 over Meehan '533 in view of Webster's, The Condensed Chemical Dictionary, Meehan '613 and Sramek. Meehan '533, the primary reference, while teaching the dispensing of a deodorant liquid into a toilet facility, fails to disclose a solution of menthol in alcohol and, for the reasons

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outlined above, the secondary references do not remedy this deficiency. Stated simply, none of the applied references, either singularly or in combination, teaches or suggests utilizing an odorless solution of 5-15% by weight menthol in alcohol, as required by the appealed claims. While we agree with the examiner that it would have been obvious to utilize an alcohol solution of menthol in a concentration that is detectable by the olfactory senses and, thereby, acts as a deodorant, the applied prior art fails to render obvious within the meaning of § 103 the use of menthol in concentrations that are substantially odorless.

In conclusion, based on the foregoing, we are constrained to reverse the examiner's rejection.

REVERSED

EDWARD C. KIMLIN	)	
Administrative Patent Judge	)	
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	)	
	)	
CHUNG K. PAK	)	BOARD OF PATENT
Administrative Patent Judge	)	APPEALS AND
	)	INTERFERENCES
	)	
	)	
THOMAS A. WALTZ	)	
Administrative Patent Judge	)	

Julian H. Cohen  
Ladas and Parry  
26 West 61st St.  
New York, NY 10023

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